



PTO/SB/17p (11-05)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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PETITION FEE**Under 37 CFR 1.17(f), (g) & (h)**
TRANSMITTAL

(Fees are subject to annual revision)

Send completed form to: Commissioner for Patents
P.O. Box 1450, Alexandria, VA 22313-1450

Application Number	10/567,635
Filing Date	02/08/2006
First Named Inventor	M. Burke
Art Unit	
Examiner Name	
Attorney Docket Number	

Enclosed is a petition filed under 37 CFR 1.182 that requires a processing fee (37 CFR 1.17(f), (g), or (h)). Payment of \$ 400.00 is enclosed.

This form should be included with the above-mentioned petition and faxed or mailed to the Office using the appropriate Mail Stop (e.g., Mail Stop Petition). If applicable. For transmittal of processing fees under 37 CFR 1.17(l), see form PTO/SB/17.

Payment of Fees (small entity amounts are NOT available for the petition fees)

The Commissioner is hereby authorized to charge the following fees to Deposit Account No. 19-4709 ;
 petition fee under 37 CFR 1.17(f), (g) or (h) any deficiency of fees and credit of any overpayments
 Enclose a duplicative copy of this form for fee processing.

Check in the amount of \$ _____ is enclosed.

Payment by credit card (Form PTO-2038 or equivalent enclosed). Do not provide credit card information on this form.

Petition Fees under 37 CFR 1.17(f): Fee \$400 Fee Code 1462

For petitions filed under:

§ 1.36(a) - for revocation of a power of attorney by fewer than all applicants
 § 1.63(e) - to accord a filing date.
 § 1.57(e) - to accord a filing date.
 § 1.182 - for decision on a question not specifically provided for.
 § 1.183 - to suspend the rule.
 § 1.378(e) - for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.
 § 1.741(b) - to accord a filing date to an application under § 1.740 for extension of a patent term.

Petition Fees under 37 CFR 1.17(g): Fee \$200 Fee Code 1463

For petitions filed under:

§ 1.12 - for access to an assignment record.
 § 1.14 - for access to an application.
 § 1.47 - for filing by other than all the inventors or a person not the inventor.
 § 1.59 - for expungement of information.
 § 1.103(a) - to suspend action in an application.
 § 1.136(b) - for review of a request for extension of time when the provisions of section 1.136(a) are not available.
 § 1.295 - for review of refusal to publish a statutory invention registration.
 § 1.298 - to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued.
 § 1.377 - for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.
 § 1.550(c) - for patent owner requests for extension of time in ex parte reexamination proceedings.
 § 1.856 - for patent owner requests for extension of time in inter partes reexamination proceedings.
 § 5.12 - for expedited handling of a foreign filing license.
 § 5.18 - for changing the scope of a license.
 § 5.25 - for retroactive license.

Petition Fees under 37 CFR 1.17(h): Fee \$130 Fee Code 1464

For petitions filed under:

§ 1.19(g) - to request documents in a form other than that provided in this part.
 § 1.84 - for accepting color drawings or photographs.
 § 1.91 - for entry of a model or exhibit.
 § 1.102(d) - to make an application special.
 § 1.138(c) - to expressly abandon an application to avoid publication.
 § 1.313 - to withdraw an application from issue.
 § 1.314 - to defer issuance of a patent.

 Signature
 Matthew W. Siegal
 Typed or printed name

March 19, 2007

Date

32,941

Registration No., if applicable

This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 5 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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57122.0092
(MWS:BPL)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : **Burke, et al.**
 Application No.: **10/567,635** Art Unit No. : **1293**
 Filed : **February 8, 2006** Examiner :
 For : **IMPROVED ANTHELMINTIC FORMULATIONS**

Date: March 19, 2007

Mail Stop Office of Petitions
 Commissioner for Patents
 PO Box 1450
 Alexandria, Virginia 22313-1450

Petition to Revoke Power of Attorney and Appoint New Agent under 37 CFR 1.182

Sir:

Petitioner The Hartz Mountain Corporation ("Hartz") hereby petitions the Director, under 37 C.F.R. §1.182, to accept the revocation of the power of attorney by less than all owners dated October 27, 2006. Specifically, Petitioner hereby petitions to revoke the power of attorney previously granted to Bracewell & Giuliani LLP and its attorney and agents as the attorney or agent ("Bracewell") to prosecute U.S. Pat. Application No. 10/567,635. Petitioner Hartz is the owner of record of 50 percent undivided interests of the applications. Petitioner wishes to reinstate the original agent of record, Stroock & Stroock & Lavan, L.L.C. as Petitioner's representative before the Patent and Trademark Office. In support of this Petition, Petitioner submits herewith the Declaration of Max C. Marx.

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- App. No.: 10/567,635
Filed: February 8, 2006

The petition to revoke the power of attorney and to appoint a new representative by less than all owners is acceptable with "good and sufficient reasons as to why such papers should be accepted." MPEP 402.10. Petitioner's petition should be granted because it is supported by good and sufficient reason because Bracewell acted in conflict with Petitioner's interest in breach of proper procedures required by the June 28, 2006 Agreement by and among Virbac, Inc. (the other co-owner), Chanelle Pharmaceuticals Manufacturing Limited and The Hartz Mountain Corporation (the "Main Agreement"); the June 29, 2006 Patent Interest Agreement by and between Virbac and Hartz (the "Patent Interest Agreement"), and those specified by the Patent and Trademark Office.

Petitioner has received certain documents that were filed by Bracewell with the Patent and Trademark Office on February 12, 2007. These documents sought to add two new inventors and to remove two inventors. Marx Dec. at ¶ 7. However, Bracewell's filing does not comply with the proper requirement to change inventorship as described in MPEP 201.03. Bracewell's request to add and delete inventors was without Petitioner's permission in violation of 37 CFR 1.48(a), which requires the written consent of every existing assignee. MPEP 201.03(D). Bracewell made these filings unilaterally, presumably at the request of co-assignee Virbac, without providing Petitioner a meaningful opportunity to review the materials and comment. Such opportunity is provided by the Agreements. Marx Dec. at ¶¶11-13.

Furthermore, at least two of the documents Bracewell filed on February 12, 2007, including a document entitled "Petition Regarding Unavailable or Uncooperative Inventors", was not previously presented to Petitioner for review. Marx Dec. at ¶8.

In the Petition Regarding Unavailable or Uncorporative Inventors, Virbac through Bracewell represents to the USPTO that Albert Ahn and Ian Cottrell, named inventors, were each

App. No.: 10/567,635
Filed: February 8, 2006

“unavailable” in its filed on the same date. Marx Dec. at ¶9. Petitioner disputes the representations about their unavailability. Bracewell did not forward its unilateral filing to Petitioner for review until 11:45 am EST on February 12 – the day the filings were made. Marx Dec. at ¶5. Its accompanying letter demanded that two current inventors, Albert Ahn and Ian Cottrell, who were no longer Hartz employees, execute declarations regarding inventorship that they likely did not believe were true. Id. Bracewell’s conduct falls far short of the “diligent effort” to reach the inventors required by 37 C.F.R. 1.47 to prove unavailability, as discussed under MPEP 409.03. That Albert Ahn and Ian Cottrell were unable to sign the oath was caused by Bracewell not presenting the documents in time for their proper review and in all likeliness, because they did not consent to Bracewell’s attempts to alter the inventorship entity.

Petitioner does not consent to the filing of the document that contains statement it disagrees with and did not even have an opportunity to review. Marx Dec. at ¶10.

Given the inadequate notice to Petitioner, the disregard for proper protocol and format, and disagreement with the substance of the filing, Petitioner could not give consent to the filing. Yet, Bracewell submitted the documents to the Patent and Trademark Office, potentially rewriting the history of these inventions to Hartz’ detriment. Thus, Petitioner no longer believes Bracewell was or will suitably represent Petitioner’s interests in this matter.

Apart from filing documents and making representations without the consent of Petitioner, Bracewell’s action creates a conflict with Petitioner’s contractual interest embodied in the Patent Interest Agreement and the Main Agreement. As a result of these Agreements, the application, which was previously jointly assigned to Hartz and Chanelle Corporation was subsequently assigned to Hartz and Virbac. Marx Dec. at ¶¶2-3. Now, Bracewell has taken

App. No.: 10/567,635
Filed: February 8, 2006

actions on behalf of Virbac that directly conflicts with Hartz' rights under the Agreements. For example, ¶3.3 of the Patent Interest Agreement requires that:

[I]n the event that either Party learns of a claim regarding inventorship of the Patents, that Party will give written notice to the other Party as soon as reasonably practicable and the Parties agree to use commercially reasonable best efforts to cooperate, as necessary, to prepare responses and other filings regarding inventorship of the Patents.

Marx Decl. at ¶11. As previously discussed, Virbac did not give notice of its recent filing "as soon as reasonably practicable."

In view of the foregoing, Petitioner respectfully submits that the Director should accept the revocation of Bracewell's power of attorney and reinstate Stroock & Stroock & Lavan, L.L.C. to act as its representative before the Office. No fee, other than the \$400.00 fee for the filing of a petition under 37 C.F.R. 1.182, is deemed necessary in connection with this Petition. However, if any other fee is due the amount of any fee may be charged to Deposit Account No. 19-4709.

Respectfully submitted,



Matthew W. Siegal
Registration No. 32,941
Attorney for Applicant
STROOCK & STROOCK & LAVAN, LLP
180 Maiden Lane
New York, New York 10038-4982
(212)806-5400



STROOCK

FACSIMILE

DATE

March 19, 2007

TO	COMPANY NAME	FAX NO.	PHONE NO.
Maintenance Fee Branch Commissioner for Patents	U.S. Patent and Trademark Office	571-273-6500	571-272-6500

TOTAL NO. OF PAGES	11
FROM	Matthew W. Siegal, Reg. No. 32,941
SENDER'S FAX NUMBER	212-806-6006
SENDER'S PHONE NO.	212-806-6444
SENDER'S EMAIL	msiegel@stroock.com
ROOM NO.	3836
ATTORNEY NO.	1577
CLIENT/MATTER NAME	U.S. Patent Application No. 10/567,635 Filed: February 8, 2006 For: Improved Anthelmintic Formulations
CLIENT/MATTER NO.	257122/0092

MESSAGE SUBMITTED HEREWITHE PLEASE FIND:

1. CERTIFICATE OF TRANSMISSION BY FACSIMILE (37 C.F.R. § 1.8) (1 PG)
2. PETITION TO REVOKE POWER OF ATTORNEY AND APPOINT NEW AGENT UNDER 337 CFR 1.182 (4 PGS.)
3. DECLARATION OF MAX C. MARX IN SUPPORT OF 37 C.F.R. 1.182 PETITION (EXECUTED) (4 PGS.)
4. POWER OF ATTORNEY (EXECUTED) (1 PG)
5. PETITION FEE TRANSMITTAL (1 PG)

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Docket No.
257122/0092

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Burke, et al.

Group Art Unit: 1293

Application No.: 10/567,635

Examiner:

Filed: February 8, 2006

For: Improved Anthelmintic Formulations

Date: March 19, 2007

**CERTIFICATE OF TRANSMISSION
BY FACSIMILE (37 C.F.R. § 1.8)**

Mail Stop PETITIONS
Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

I hereby certify that the following correspondence:

Petition to Revoke Power of Attorney and Appoint New Agent under 337 CFR 1.182 (4 pgs.); Declaration of Max C. Marx in Support of 37 C.F.R. 1.182 Petition (4 pgs.); Power of Attorney (executed) (1 pg); and Fee Transmittal (1 pg).

is being transmitted by facsimile to the United States Patent and Trademark Office in accordance with 37 C.F.R. § 1.8 on the following date: March 19, 2007

Benjamin P. Liu

(Typed Or Printed Name Of Person Signing this Certificate)

(Signature)

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257122.0092
(MWS:BPL)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Burke, et al.

Application No.: 10/567,635 Art Unit No. : 1293

Filed : February 8, 2006 Examiner :

For : IMPROVED ANTHELMINTIC FORMULATIONS

Mail Stop Office of Petitions
Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Date: March 19, 2007

Declaration of Max C. Marx in Support of 37 C.F.R. § 1.182 Petition

I, Max C. Marx, Esq., declare the following:

1. I am the Corporate General Counsel and Corporate Secretary of The Hartz Mountain Corporation ("Hartz"), one of the two co-assignees having 50 percent undivided interest in the above referenced application.
2. The application was filed on February 8, 2006 and subsequently assigned by the inventors to Hartz and Chanelle Pharmaceuticals Manufacturing Limited ("Chanelle") jointly, each possessing a 50 percent undivided interest. Stroock & Stroock & Lavan, L.L.P. was appointed the counsel of record before the Patent and Trademark Office and filed the application and assignment documents.
3. Subsequently, Virbac, Inc. ("Virbac"), Chanelle and Hartz entered into an Agreement on June 28, 2006. Virbac and Hartz entered into a separate Patent Interest Agreement on June 29, 2006. As a result of these agreements, the application was reassigned to Hartz and Virbac, each possessing a 50 percent undivided interest.

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App. No.: 10/567,635
Filed: February 8, 2003

4. As per their agreement, Hartz and Virbac then granted a power of attorney to Bracewell & Giuliani LLP ("Bracewell") to represent both co-owners. The previous power of attorney to Stroock was revoked.

5. At about noon, February 12, 2007, I received a set of documents from Bracewell, which contained a response to a patent office missing parts communication and a set of attached documents to be filed with the Patent and Trademark Office on the same day. The same communication requested that two current inventors, Albert Ahn and Ian Cottrell (ex-Hartz employees), to execute declarations regarding the inventorship of the applications, which named purported inventors they had never worked with.

6. I did not have adequate time to review the inventorship issues and act on the documents. Furthermore, I disagreed with some of the substance of what I did review. As a result of the lack of notice, the disregard for proper protocol and format, and my disagreement with the substance of the filing, I instruct Bracewell not to file the documents to modify the inventorship.

7. On February 23, 2007, I received another communication from Bracewell, forwarding a set of documents it had filed with the Patent and Trademark Office on February 12, 2007 without Hartz' consent. These documents sought to add two new inventors and to remove two of the originally named inventors. I recognized some of the documents as the ones I reviewed and refused to give consent on February 12, 2007.

8. In addition, I found at least one document that had been filed without my review, because it was not among the documents furnished to me on February 12, 2007—a Petition Regarding Unavailable or Uncooperative Inventors. This petition listed Albert Ahn and Ian Cottrell as unavailable or uncooperative inventors.

App. No.: 10/567,635
Filed: February 8, 2003

9. Furthermore, a review of the documents shows that Bracewell filed an unsigned declaration and oath including the new list of inventors without signature. In my view there was no support for considering Albert Ahn and Ian Cottrell unavailable or uncooperative. For the same reasons, I disagree with the representation that Albert Ahn and Ian Cottrell were unavailable in the Petition Regarding Unavailable or Uncooperative Inventors.

10. Bracewell filed these documents without the consent of Hartz, a co-assignee. I made additional objections to Bracewell subsequent to the unauthorized filing and demanded Bracewell to forward the missing documents.

11. Paragraph 3.1 of the Patent Interest Agreement between Hartz and Virbac, which I signed on June 24, 2006, requires that:

VIRBAC shall diligently file, prosecute and maintain the Patents, at its own cost during the term of this Agreement; HARTZ shall use its commercially reasonable best efforts to cooperate with VIRBAC in such filing, prosecuting or maintaining of any Patent.

12. Paragraph 3.3 of the Patent Interest Agreement between Hartz and Virbac, which I signed on June 24, 2006, requires that:

[I]n the event that either Party learns of a claim regarding inventorship of the Patents, that Party will give written notice to the other Party as soon as reasonably practicable and the Parties agree to use commercially reasonable best efforts to cooperate, as necessary, to prepare responses and other filings regarding inventorship of the Patents.

13. Bracewell's filing on behalf of Virbac did not give notice to Hartz "as soon as reasonably practicable" and Bracewell's belated communication with Hartz fails to evidence diligent filing and prosecution of the patents. Therefore, its action further conflicts with the Patent Interest Agreement.

App. No.: 10/567,635
Filed: February 8, 2003

14. I no longer believe that Bracewell is acting in Hartz's interest and Hartz wishes to revoke the power of attorney given to them. On March 16, 2007, I sent a letter to Bracewell revoking Hartz' previous grant of the power of attorney.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: March 19, 2007

Respectfully submitted,

Max Marx
Max C. Marx
Corporate General Counsel and Corporate
Secretary of The Hartz Mountain Corporation



257122.0092
(MWS:BPL)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : **Burke, et al.**

Application No.: **10/567,635** Art Unit No. : **1293**

Filed : **February 8, 2006** Examiner :

For : **IMPROVED ANTHELMINTIC FORMULATIONS**

REVOCATION OF POWER OF ATTORNEY WITH NEW POWER OF ATTORNEY

The undersigned, The Hartz Mountain Corporation, is an assignee and owner of 50 percent undivided interest in U.S. Patent Application 10/567,635 filed on February 8, 2006 entitled "Improved Anthelmintic Formulations," and hereby appoint the practitioners associated with Customer Number 26610 as their attorney or agents, with full power of substitution and revocation to prosecute this application and transact all business in the Patent and Trademark Office connected therewith, and I hereby authorize them to add new practitioners to, and delete practitioners from, that Customer Number.

All previous powers are hereby revoked. This power of attorney may be revoked as provided by the provisions of 37 C.F.R. § 1.36.

All communications regarding this representation should be directed to:

Intellectual Property Department
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038
tel: 212-806-5400
fax: 212-806-6006

Date: March 19, 2007

A handwritten signature in black ink that appears to read "Max C. Marx".

The Hartz Mountain Corporation

By: **Max C. Marx**
Corporate General Counsel & Corporate Secretary